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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

Frank Pierce ("Mr. Pierce"), by and through his attorneys, hereby objects to the Notice of Trustee's Determination of Claim dated December 8, 2009 ("Determination Letter"), attached as Exhibit A, as described herein.

BACKGROUND

1. On December 11, 2008, the above-captioned liquidation proceeding was commenced against BMIS, pursuant to SIPA. *See* Order, *Securities and Exchange Commission v. Madoff*, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee (“BMIS Trustee”), charged with overseeing the liquidation of BMIS and processing customer claims for money pursuant to SIPA. *Id.*; *see also* 15 U.S.C. 78fff-1(a).

2. Mr. Pierce is an investor in Greenwich Sentry Partners, L.P. (“Greenwich Sentry Partners”) and, on information and belief (including information provided by Fairfield Greenwich (Bermuda) Ltd., the General Partner of Greenwich Sentry Partners), Greenwich Sentry Partners is a “customer,” as defined by the Securities Investor Protection Act of 1970 (“SIPA”), of BMIS. Thus, Mr. Pierce has an interest in certain claims belonging to Greenwich Sentry Partners in the BMIS liquidation proceeding.

3. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to BMIS customers and setting forth claim-filing deadlines. *See* Order [Dkt. No. 12]. Upon information and belief, the BMIS Trustee disseminated notice and claim forms to BMIS’s customers in accordance with the Court’s Order.

4. The December 23, 2008 Order further provided that, to the extent the BMIS Trustee disagrees with the amount set forth on a customer claim form, the BMIS Trustee “shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, *and the reason therefor . . .*” *See* Order at 6 (emphasis added) [Dkt. No. 12].

5. On or about July 1, 2009, Mr. Pierce submitted a customer claim form to SIPC, which was designated as Claim No. 015147 by the BMIS Trustee (“Pierce Customer Claim”) (Exhibit B).¹

6. On December 8, 2009, the BMIS Trustee sent Mr. Pierce the Determination Letter disallowing Mr. Pierce’s claim in its entirety on the basis that he “is not a customer of BLMIS under SIPA as that term is defined at 15 U.S.C. § 78lll(2).” *See* Determination Letter (Exhibit A).

OBJECTION

7. Mr. Pierce hereby objects to the Determination Letter on the basis of the reasons set forth herein.

8. First Objection. Normally, bankruptcy law prevents parties whose claims are derived from the claim of a creditor from seeking to recover on such derived claims from the debtor. Such rules are designed to prevent duplicate recoveries arising from what amounts to a single legal claim. *See* Bankruptcy Code §§ 502(e), 509. However, bankruptcy law also recognizes that the derivative claimant should be permitted to file such a claim when the direct creditor fails or refuses to file or prosecute a claim since, in such cases, there is no risk of a double recovery. For example, bankruptcy law provides that “[i]f a creditor does not timely file a proof of such creditor’s claim, an entity that is liable to such creditor with the debtor, or that has secured such creditor, may file a proof of such claim.” *See* Bankruptcy Code § 501(b); *see also* Fed. R. Bankr. P. 3005(a). To the extent that this is the case here with respect to Greenwich Sentry Partners, or any other entity, these principles apply here and it is only appropriate and equitable that Mr. Pierce’s claim be considered and honored, as there is no danger of double

¹ In accordance with the Court’s Order dated October 20, 2009 [Dkt. No. 533], Claimant’s personal identification data has been redacted from Exhibit B.

recovery to the extent that these entities have failed to file and/or prosecute or defend any claims on their own behalves or on behalf of Mr. Pierce.

9. Second Objection. The BMIS Trustee has encouraged all those who lost money due to the Madoff Ponzi scheme to file customer claim forms. This includes investors such as Mr. Pierce who invested “indirectly” with BMIS. The BMIS Trustee has clearly contemplated a scenario whereby “indirect” investors, such as Mr. Pierce, would be entitled to have their claims allowed and/or paid in this proceeding. To the extent that any such “indirect” claims are allowed and/or “indirect” claimants are deemed “customers” under SIPA by virtue of the present statute, any amended statute, any decision or ruling of any administrative agency, any decision or ruling by SIPC or the Madoff Trustee, or any decision or order of any court, he reserves the right to challenge any determination of his claim by the BMIS Trustee.

RELIEF REQUESTED

10. For the reasons stated herein, Mr. Pierce’s claim should be allowed insofar as it is part of Greenwich Sentry Partner’s claim.

11. To the extent Mr. Pierce’s claim is deemed to be filed on behalf of Greenwich Sentry Partners, Mr. Pierce reserves the right to supplement his claim and submit further objections to any Determination of Claim directed to Mr. Pierce, including but not limited to the right to object to the BMIS Trustee’s method of calculating “net equity” or other objections to the method by which the BMIS Trustee has calculated the amount of the claim.

12. Mr. Pierce requests such other relief as may be just and equitable.

CONCLUSION

13. Mr. Pierce reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of Mr. Pierce's right to object on any additional grounds.

14. Mr. Pierce reserves all rights set forth in Rule 9014, including, without limitation, rights of discovery. *See* Fed. R. Bankr. P. 9014.

15. Mr. Pierce reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

16. Mr. Pierce incorporates by reference all reservations of rights set forth in Mr. Pierce's Customer Claim.

Dated: January 7, 2010

/s/ Jonathan M. Landers
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